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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,951	12/14/1999	CARLINO PANZERA	JEN-0005-Z	3152

23413 7590 01/13/2003

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EXAMINER

DERRINGTON, JAMES H

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 01/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/460,951

Applicant(s)

PANZERA ET AL.

Examiner

James Derrington

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 and 9. 6) ☐ Other: _____

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The suspension of action set forth in paper no. 8 has been terminated.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank et al (5,698,019) or Germany 1 441 336 in view of Chemical Abstracts 120 (M. Y. Shareef et al).

Frank et al disclose a dental restoration material for use in preparing crowns, bridges, teeth, etc.. The material comprises the components listed in the table of claim 1 including amounts that are overlapping with the claimed components (Compare table at Col. 2 of reference with table in instant claim 1). The material also contains leucite crystalline and all crystalline phases preferably have an average size of less than 3 microns (See Abstract and Col. 2, lines 62-67). Because of the similarity of the components and ranges, it appears that the instant maturing temperature and coefficient of thermal expansion would be inherent in the materials of Frank.

Applicant has argued in paper no. 6 that Frank teaches crystals having an average size of less than 3 microns while the claims recite crystals having diameters not exceeding about 10 microns. First it is noted that Frank teach that it is advantageous for mechanical strength if "all the crystals of the individual phases are essentially of the same size". Thus the examiner can not agree with applicant's position that particles of

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40 microns would reasonably suggested by Frank as alleged by applicant. But in addition the teachings of Shareef et al are relied on where related leucite dental compositions are set forth. Shareef teach that leucite crystals having a more uniform distribution and finer size (emphasis added) provide higher flexural strength and less microcracking. Thus there is incentive to use the instant crystallite particle size with the process of Frank et al in order to achieve the benefits disclosed by Shareef et al.

Germany 1 441 336 disclose a dental restoration material and according to the cited opposition document (VITA Zahnfabrik) at page 3/8, the instant dental porcelain is set forth with the exception of the claimed limitation "diameters not exceeding about 10 microns". Shareef teach that leucite crystals having a more uniform distribution and finer size (emphasis added) provide higher flexural strength and less microcracking. Thus there is incentive to use the instant crystallite particle size with the process of Germany 1 441 336 in order to achieve the benefits disclosed by Shareef et al.

The issue of public use or on sale activity does not appear to have been resolved in parent application 08/870,965. The examiner requests that additional information as it becomes available regarding the status of the litigation in the parent application be presented in this application. Additionally, the examiner requests information (to the extent possible) as to how the components and properties of the claims are the same as or different from the material (LF-1-PFM) asserted by Chemichl, Inc. "to be distributed in the United States".

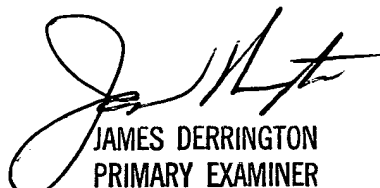
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Derrington whose telephone number is 703 308-3832. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7718 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0661.

jd
January 12, 2003


JAMES DERRINGTON
PRIMARY EXAMINER
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